IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1401 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MONTESWARI HARIKRISHNAN

Versus

DIRECTOR GENERAL OF SHIPPING

Appearance:

1. Special Civil Application No. 1401 of 1999

MR MUKUL SINHA for Petitioner No. 1

MR BIPIN I MEHTA for Respondent No. 1

MR JV BHAIRAVIA for Respondent No. 2

RULE SERVED BY DS for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 17/09/2004

ORAL JUDGEMENT

1. This petition is filed by the wife of Harikrishnan who was an employee of the respondent no.2. Initially, the case of the petitioner was that her husband while on duty was found missing between 12th February, 1993 to 15th February, 1993 and the whereabouts of the husband of the petitioner were not known. The petitioner had earlier approached the Madras High Court, but an appeal was not entertained on the ground of lack of jurisdiction, and the petitioner, therefore, filed the present petition praying inter alia that the respondent no.1 be directed to consider the representation of the petitioner dated 19th May, 1993 and settle all her legal claims.

2. During the pendency of the petition, certain developments have taken placed which are required to be taken into consideration. The learned Advocate for the petitioner produces a judgment and decree dated 30th December, 2003 passed by the City Civil Court, Madras, which is ordered to be taken on record in which it is clear that the husband of the petitioner is dead. The said order is on the basis that the whereabouts of the husband of the petitioner were not known for more than seven years. On the basis of this judgment, the petitioner contents that she is entitled to receive all the dues from the respondent no.2. The learned Advocate Shri Bhairavia for the respondent no.2 does not dispute that the petitioner would be entitled to the consequential relief pursuant to the said decree of the City Civil Court, Madras. He, however, submits that the brother of the deceased had filed a Civil Suit before the Madras Court claiming to be the heir of the deceased Harikrishnan. He, therefore, submits that the respondent no.2 should be safeguarded against possibility of double payment of their dues. Prima facie, I find that the petitioner being the wife of the deceased would be entitled to receive the dues of the deceased Harikrishnan, and as long as the petitioner is in the picture, the brother of the deceased can have no legal claim. In any case, learned Advocate for the petitioner states that the deceased husband of the petitioner had nominated the petitioner as the person who should receive the dues in his absence. Learned Advocate Shri Bhairavia for the respondent no.2 concedes to this factual position. In that view of the matter, the respondent no.2 would be legally bound to pay to the petitioner all the dues on the basis of the death of the husband of the petitioner. It is directed that the respondent shall pay to the petitioner all the dues on the basis that the husband of the petitioner has expired. For additional safeguard, it is further provided that it will be open

for the respondent no.2 to obtain an indemnity bond from the petitioner indemnifying the respondent no.2 against any such claim in future from any other party. The said amounts shall be paid within a period of eight weeks from today.

3. In the result, the petition succeeds to the above extent. Rule is made absolute. No orders as to costs.

(Akil Kureshi,J.)

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